

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY W. STEWART,

Petitioner,

v.

J. MACOMBER, *et al.*

Respondents.

Case No. 1:23-cv-00374-CDB (HC)

FINDINGS AND RECOMMENDATION THAT
(1) THE PETITION FOR WRIT OF HABEAS
CORPUS BE DISMISSED WITH PREJUDICE,
AND (2) PETITIONER BE DECLARED A
VEXATIOUS LITIGANT

(Docs. 1, 6)

14-DAY DEADLINE

Petitioner Gregory W. Stewart (“Petitioner”) is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). On March 28, 2023, the undersigned conducted a preliminary screening of the petition. (Doc. 6). The undersigned found Petitioner had sought relief from this Court on numerous occasions for the same conviction he attacks in this action. *See id.* at 2-4 (citing cases). Petitioner made no showing that he had obtained prior leave from the Ninth Circuit to file a successive petition. *Id.* at 4. Further, the undersigned found Petitioner qualified as a vexatious litigant. *Id.* at 4-5. Specifically, the undersigned noted Petitioner had submitted photocopies of the same petition multiple times to other judges of this Court containing duplicative claims that have all been dismissed. *Id.* at 5. The Court provided Petitioner 30 days to show cause in writing why his petition should not be dismissed for being a successive petition and why he should not be deemed a vexatious litigant. *Id.*

1 On April 10, 2023, Petitioner filed a response to the order to show cause. (Doc. 7). Petitioner
2 asks for a motion for reconsideration, a motion and application for leave, and asserts objections to the
3 magistrate judge's findings and recommendations. *Id.* at 1. Thereafter, Petitioner lists cases he has
4 filed to this Court and the Ninth Circuit. *Id.* at 2-6. The undersigned notes again it appears Petitioner
5 has submitted photocopies of the same "objections" multiple times to this Court.¹

6 Accordingly, because Petitioner's responsive filing to the order to show cause does not, in fact,
7 respond to the issues regarding successive petition and vexatious litigation, IS HEREBY ORDERED:

- 8 1. The Clerk of Court is DIRECTED to randomly assign a district judge to this action for
9 the purposes of reviewing these findings and recommendations;

10 And IT IS HEREBY RECOMMENDED:

- 11 1. That the petition for writ of habeas corpus (Doc. 1) be DISMISSED WITH
12 PREJUDICE as an unauthorized successive petition; and
13 2. That Petitioner be declared a vexatious litigant subject to pre-filing conditions set forth
14 below, pursuant to 28 U.S.C. § 1651(a) and the Court's inherent power to regulate
15 abusive litigation, for the reasons addressed in the Court's March 28, 2023, order to
16 show cause (Doc. 6):

- 17 a. Petitioner is required to file a motion requesting leave of court before filing any
18 new petition for writ of habeas corpus in the United States District Court for the
19 Eastern District of California. Such a motion must include a copy of this order
20 and an order of the Court of Appeals authorizing any second/successive
21 petition.

22 These findings and recommendations will be submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being
24

25 ¹ The Court may take judicial notice of its own records in other cases. *United States v. Wilson*,
26 631 F.2d 118, 119 (9th Cir. 1980). Here, Petitioner has filed similar, photocopy "objections" in this
27 district. *See e.g.*, *Stewart v. Macomber*, No. 1:22-cv-01121-ADA-EPG (Doc.12); *Stewart v.*
Macomber, No. 1:21-cv-00063-DAD-HBK (Doc.11); *Stewart v. Macomber*, No. 1:20-cv-00221-
28 DAD-EPG (Doc. 8); *Stewart v. Macomber*, No. 1:20-cv-01541-DAD-JLT (Doc. 8); *Stewart v.*
Macomber, No. 1:20-cv-00969-DAD-SAB (Doc. 8); *Stewart v. Macomber*, No. 1:20-cv-01323-DAD-
JLT (Doc. 9); *Stewart v. Macomber*, No. 1:19-cv-01056-LJO-JLT (Doc. 7); *Stewart v. Macomber*, No.
1:17-cv-01420-LJO-EPG (Doc.10).

1 served with these findings and recommendations, Petitioner may file written objections with the Court.
2 The document should be captioned “Objections to Magistrate Judge’s Findings and
3 Recommendations.” Petitioner is advised that failure to file objections within the specified time may
4 result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
5 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6 IT IS SO ORDERED.

7 Dated: September 19, 2023


UNITED STATES MAGISTRATE JUDGE